

Remarks

The Office Action dated July 11, 2006 indicated the following new rejections: claims 1-4, 6-9 and 12 stand rejected under 35 U.S.C. § 103(a) over Binks (U.S. 4,320,699); claims 1-9 and 12 stand rejected under 35 U.S.C. § 103(a) over Leiros (U.S. 4,995,312); and claims 10-11 stand rejected under 35 U.S.C. § 103(a) over Binks.

Applicant respectfully traverses all of the claim rejections because the Final Office Action failed to show correspondence to all claimed limitations in referring generally to each cited reference and citing only to subject matter allegedly corresponding to a single claimed limitation directed to a flange. Furthermore, the alleged “flange” in the Binks and Leiros references does not correspond to the flange set forth in claim 1. These improprieties with the claim rejections are addressed in greater detail below, in connection with the respective rejections over the Binks and Leiros references.

Beginning with the rejection of claims 1-4, 6-9 and 12 (and as applicable to the rejection of claims 10 and 11 which depend from claim 1 and also over Binks), the rejection fails to cite or even allege correspondence to all of the claimed limitations. Specifically, the rejection simply states that “Binks discloses the claimed invention except for the collar being “detachable” and notes only to “flange (49) projecting outwardly from the topmost end and projecting downward closely along a preponderance of the exterior wall surface.” The Final Office Action makes no mention of any other claimed limitations including, for example, those in claim 1 directed to a pan having a topmost end, a heater, a housing shielding the pan from the environment, and a detachable collar. In this regard, the Final Office Action has failed to cite any teaching or suggestion of the majority of the claimed limitations in rejecting the claims over Binks.

Applicant has further reviewed the Binks reference and cannot ascertain any teaching or suggestion of various claimed limitations unaddressed by the Final Office Action, and further submits that the asserted “flange” in the Binks reference does not correspond to the claimed flange. For instance, there is no teaching or suggestion of “a collar extending closely along and at least up to the topmost end of the pan and substantially around its periphery to intercept liquid as it passes over the top most end.” In this regard, not only does the Binks reference fail to teach or suggest a detachable collar, it fails to teach

or suggest a collar in general. Furthermore, the Binks reference is directed to “NON-STICK LINERS FOR HEATED COOKING SURFACES” as indicated in its title, and when implemented with a deep fat fryer (47 of FIG. 8), the liners are held in place using “retaining clips 49.” These “retaining clips 49” do not correspond to the claimed “flange” as suggested by the examiner in that they do not project “downward closely along a preponderance of the exterior wall surface.” Referring to FIG. 8, the retaining clips 49 appear to project downward along much less than one-fourth of the exterior wall surface of the fryer 47, to “clamp in margins of the liner onto the upper rim of the pot 47” (*see* column 9:43-44). In this regard, the Final Office Action has failed to cite portions of the Binks reference that teach or suggest all of the claimed limitations, and the section 103 rejection is therefore improper and should be removed.

Turning to the rejection of claims 1-9 and 12 over the Leiros reference, the rejection simply states that “Leiros discloses the claimed invention except for the collar being “detachable”” and notes only to “flange (5a) projecting outwardly from the topmost end and projecting downward closely along a preponderance of the exterior wall surface.” The Final Office Action makes no mention of any other claimed limitations including, for example, those in claim 1 directed to a pan having a topmost end, a heater, a housing shielding the pan from the environment, and a detachable collar. In this regard, the Final Office Action has failed to cite any teaching or suggestion of the majority of the claimed limitations in rejecting the claims over Leiros.

Applicant has further reviewed the Leiros reference and cannot ascertain any teaching or suggestion of various claimed limitations unaddressed by the Final Office Action, and further submits that the asserted “flange” in the Leiros reference does not correspond to the claimed flange. For instance, the Final Office Action has not cited, and Applicant cannot ascertain any teaching or suggestion of “a collar extending closely along and at least up to the topmost end of the pan and substantially around its periphery to intercept liquid as it passes over the top most end.” The cited “flange (5a)” appears to be a heat insulating ring with a flat, outwardly-tapered surface that neither intercepts liquid nor is detachable (*see, e.g.*, FIG. 1, FIG. 2 and corresponding discussion at column 3:12-19). In this regard, not only does the Leiros reference fail to teach or suggest a detachable collar, it fails to teach or suggest a collar that intercepts liquid as claimed. Moreover, Leiros’ flange

(5a) does not correspond to the claimed “flange” as suggested in the Final Office Action in that the flange 5a does not project “downward closely along a preponderance of the exterior wall surface.” Referring to FIG. 1 and FIG. 2, the portion 5a of the ring 5, and the ring itself, projects downward along a very short upper portion of an exterior wall surface (skirt 3) of a cooking device. This portion 5a appears to extend far less than one-tenth of the exterior wall surface, much less any “preponderance of an exterior wall surface” as claimed. In this regard, the Final Office Action has failed to cite portions of the Leiros reference that teach or suggest all of the claimed limitations, and the Section 103 rejection is therefore improper and should be removed.


Applicant further traverses each of the Section 103 rejections because the Final Office Action has failed to cite any evidence of motivation for modifying each (solely) cited reference. As described above, the Final Office Action acknowledged that the Binks and Leiros references fail to disclose claimed limitations directed to a detachable collar. The Final Office Action goes on to suggest that making flanges in the Binks and Leiros references detachable is obvious “since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art,” citing *Nerwin v. Erlichman* 168 USPQ 177, 179 (hereinafter *Nerwin*). However, in relying upon *Nerwin*, the Examiner has failed to cite any evidence supporting the Examiner’s opinion that the proposed modification of either the Binks or Leiros references would only require routine skill. As is consistent with the Board of Appeals in consideration of rejections relying upon *Nerwin*, obviousness under §103 is a legal conclusion based on factual evidence (*In re Fine*, 837 F.2d 1071, 1073, (Fed. Cir. 1988); and the subjective opinion of the examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. There is no holding in *Nerwin* indicating that “constructing a formerly integral structure in various elements involves only routine skill in the art.” The *Nerwin* case simply indicates that “[t]he mere fact that a given structure is integral does not preclude its consisting of various elements.” The Board has held this statement as a construction of the term “integral,” rather than as standing for the proposition that constructing an integral structure in various elements requires only routine skill. Since in this case there is an inadequate factual basis (*i.e.*, no cited evidence or other basis from the prior art) to support the position that the claimed detachable collar

would require only routine skill in the art, the rejections fail to establish a *prima facie* case of obviousness and must be reversed.

In view of the remarks above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the attorney overseeing the application file, Adam Stroud, of Philips Corporation at (408) 474-9064.

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